

Daniel T. Satterberg, Prosecuting Attorney
CIVIL DIVISION, Litigation Section
900 King County Administration Building
500 Fourth Avenue
Seattle, Washington 98104
(206) 296-0430 Fax (206) 296-8819

NATURE OF ACTION

1
2 1. Answering paragraph 1, King County is presently without sufficient information to
3 answer the allegations of fact contained in this paragraph and therefore denies the same.

4 2. Answering paragraph 2, deny.

5 3. Answering paragraph 3, King County is presently without sufficient information to
6 answer the allegations of fact contained in this paragraph and therefore denies the same.

7 4. Answering paragraph 4, King County is presently without sufficient information to
8 answer the allegations of fact contained in this paragraph and therefore denies the same.

9 5. Answering paragraph 5, admit.

10 6. Answering paragraph 6, the decision of the STB requires no answer and speaks for
11 itself. To the extent that paragraph 6 contains additional allegations of fact, King County denies the
12 same.

13 7. Answering paragraph 7, the decision of the STB requires no answer and speaks for
14 itself. King County denies all other factual allegations in this paragraph, including the assertion that
15 there was any “conversion” of the East Lake Sammamish Rail Corridor (ELSRC or “corridor”).

16 8. Answering paragraph 8, King County admits that it entered into various agreements
17 with BNSF and TLC, but denies Plaintiffs’ characterizations of those agreements. King County
18 further admits that it has established a trail along the rail corridor and removed the railroad tracks,
19 but denies all remaining allegations in the paragraph.

20 9. Answering paragraph 9, Plaintiffs’ state a legal conclusion for which no answer is
21 required, but King County otherwise denies the factual allegations in this paragraph.

22 10. Answering paragraph 10, deny.
23

1 allegations of fact, King County is presently without sufficient information to answer this
2 paragraph and therefore denies the same.

3 23. Answering paragraph 23, King County admits the existence of a reported decision
4 in *Beres* by Judge Horn, but denies that plaintiffs accurately or fully characterize Judge Horn's
5 conclusions. King County specifically denies that the referenced opinion accurately
6 characterizes Washington law, or establishes the proper scope of railroad easements under
7 Washington law – especially where the Court expressly departs from Washington and Ninth
8 Circuit precedent. To the extent that this paragraph includes any additional allegations, King
9 County denies the same.

10 24. Answering paragraph 24, King County admits that the BNSF Railway Company
11 owned and operated a railroad on the east side of Lake Sammamish for many years and that the
12 corridor is currently rail banked. To the extent that Paragraph 24 of the Complaint contains other
13 allegations, King County is presently without sufficient information to answer them and
14 therefore denies the same.

15 25-30. Answering paragraphs 25 – 30, these paragraphs recite legal conclusions that do
16 not require an answer. The federal interstate rail transportation statutes at 49 U.S.C. §10101 et.
17 seq., and the National Trails System Act, 16 U.S.C. 1241 et. seq., and its implementing
18 regulations, 49 C.F.R. Part 1152, speak for themselves. To the extent that paragraphs 25 through
19 30 contain allegations of fact, King County denies the same.

20 31. Answering paragraph 31, the decision of the STB attached to Plaintiffs complaint
21 as Exhibit H requires no answer and speaks for itself. To the extent that paragraph 31 contains
22 additional allegations of fact, King County denies the same.
23

32. Answering paragraph 32, King County admits that the ELSRC is rail banked pursuant to the NITU, but denies Plaintiffs' assertion that the letter attached as Exhibit I is the trail use agreement (it appears to be merely a letter summarizing such agreement(s)). To the extent that paragraph 32 contains additional allegations of fact, King County denies the same.

33. Answering paragraph 33, King County denies the same.

COUNT I—DECLARATORY JUDGMENT

34. Answering paragraph 34, King County hereby incorporates by reference its responses to paragraphs 1-34 of the complaint as though fully set forth herein.

35-37. Answering paragraphs 35-37, King County denies the same.

38. Answering paragraph 38, Plaintiffs' state a legal conclusion for which no answer is required, but King County otherwise denies the allegations in this paragraph.

39. Answering paragraph 39, King County denies the same.

KING COUNTY'S COUNTERCLAIM FOR QUIET TITLE AND DECLARATORY JUDGMENT

Counterclaim ¶1. As Counterclaim Plaintiff, King County re-alleges its answers to ¶¶1-39 of the Complaint as if fully set forth herein.

Counterclaim ¶2. King County owns fee title or exclusive railroad easement rights characterized as a "quasi-fee" in the portions of the ELSRC that are adjacent to Plaintiff's property.

Counterclaim ¶3. Plaintiffs, some or all, have interfered with King County's property rights in the ELSRC by erecting and maintaining various unauthorized improvements that impede King County's access to its property, its exclusive control, and prevent public enjoyment.

1 Counterclaim ¶4. Under RCW 7.28, title to any disputed portions of the corridor should
2 be quieted in King County.

3 Counterclaim ¶5. Plaintiffs should be required to remove any unauthorized
4 improvements erected and maintained within the ELSRC.

5 Counterclaim ¶6. Plaintiffs should be required to pay current and back rent and/or
6 special use fees for all unauthorized uses of the ELSRC.

7 Counterclaim ¶7. The Court should enter declaratory judgment for King County, holding
8 that the Trails Act preserves railroad property rights in rail banked corridors by preempting
9 abandonment of those property rights; that when a railroad corridor is rail banked pursuant to
10 the Trails Act, the railroad property rights are preserved and trail use becomes a new interim
11 authorized use; that BNSF's rail banking of the ELSRC preserved BNSF's railroad
12 property rights and allowed interim use of the corridor as a trail; and that King County, as the
13 successor to BNSF's property rights enjoys the same exclusive control over the corridor as
14 BNSF.

15 **ANSWER AND AFFIRMATIVE DEFENSES**

16 BY WAY OF FURTHER ANSWER and AFFIRMATIVE DEFENSES to plaintiffs'
17 Complaint, and without admitting anything previously denied, King County asserts the following
18 affirmative defenses against each plaintiff.

- 19 1. Plaintiffs, in whole or in part, have failed to state a claim upon which relief may
20 be granted.
- 21 2. Plaintiffs have failed to join indispensable parties.
- 22 3. Plaintiffs, in whole or in part, have stated claims under Washington law that are
23 preempted by federal law.

- 1 4. Plaintiffs, in whole or in part, have stated claims that are barred by the statute of
- 2 limitations.
- 3 5. Plaintiffs, in whole or in part, have stated claims that are barred by the doctrine of
- 4 laches.
- 5 6. Plaintiffs, in whole or in part, have stated claims that are barred by the doctrine of
- 6 waiver.
- 7 7. Plaintiffs, in whole or in part, have stated claims that fail because plaintiffs
- 8 acquiesced in the acts about which plaintiffs now complain.
- 9 8. Plaintiffs, in whole or in part, have stated claims that are barred by the doctrine of
- 10 estoppel.
- 11 9. Plaintiffs, in whole or in part, have stated claims that they, or their predecessors in
- 12 title, have previously released.
- 13 10. Plaintiffs, in whole or in part, are not the real parties in interest.
- 14 11. Plaintiffs, in whole or in part, lack standing to bring this action.

15 King County reserves the right to amend this Answer and assert additional affirmative defenses.

16 WHEREFORE, having answered Plaintiff's complaint, King County requests that this
17 Court DISMISS Plaintiff's complaint with prejudice, GRANT King County's Counterclaims,
18 and award Defendant King County its costs and reasonable attorney's fees, and award such other
19 and further relief as this Court may deem just and equitable.

1 DATED this 28th day of August, 2015.

2 DANIEL T. SATTERBERG
3 King County Prosecuting Attorney

4 By: s/ David J. Hackett
5 DAVID HACKETT, WSBA #21236
6 Senior Deputy Prosecuting Attorney

7 By: s/ H. Kevin Wright
8 H. KEVIN WRIGHT, WSBA #19121
9 Senior Deputy Prosecuting Attorney

10 By: s/ Peter G. Ramels
11 PETER G. RAMELS, WSBA #21120
12 Senior Deputy Prosecuting Attorney

13 By: s/ Barbara Flemming
14 BARBARA A. FLEMMING, WSBA #20485
15 Attorneys for Defendant King County

16 King County Prosecuting Attorney's Office
17 500 Fourth Ave., 9th Floor
18 Seattle, WA. 98104
19 Telephone: (206) 296-8820 / Fax: (206) 296-8819
20 Email: david.hackett@kingcounty.gov
21 kevin.wright@kingcounty.gov
22 pete.ramels@kingcounty.gov
23 barbara.flemming@kingcounty.gov

DECLARATION OF FILING AND SERVICE

I hereby certify that on August 28, 2015, I electronically filed the foregoing document with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the following:

Daryl A. Deutsch, WSBA # 11003
Attorney for Plaintiff
Rodgers, Deutsch & Turner, PLLC
Three Lake Bellevue Drive, Suite 100
Bellevue, WA 98005
Email: daryl@rdtlaw.com

Thomas S. Stewart
Elizabeth McCulley
Attorneys for Plaintiff
9200 Ward Parkway, Suite 550
Kansas City, MO 64114
stewart@swm.legal
mcculley@swm.legal
smith@swm.legal

I declare under penalty of perjury under the laws of the United States and the State of Washington that the foregoing is true and correct.

DATED: August 28, 2015, at Seattle, Washington.

s/ Kris Bridgman
Kris Bridgman, Legal Secretary
King County Prosecuting Attorney's Office